

ATTORNEY DOCKET NO.
020533.0238 (2002P00640US)

PATENT APPLICATION SERIAL NO
09/645,866

REMARKS

Claims 1, 3-5, 7-18, 20-21, 23-31, 33-34, and 36-39 are pending in the application. Claims 2, 6, 19, 22, 32, and 35 have been canceled above. The Examiner has indicated that claim 8 would be allowable if rewritten in independent form. In light of the following remarks, Applicants respectfully request favorable reconsideration and allowance of all of the claims pending in the application.

Drawings

Figure 4A has been corrected to include the legend "Prior Art." A corrected drawing, labeled "Replacement Sheet," is submitted herewith. Applicants respectfully request that the Examiner withdraw the objection to Figure 4A.

Objection to Claim 12

Claim 12 was objected to because it lacks a period. Applicants have amended claim 12 to include a period. Applicants respectfully request that the Examiner withdraw the objection to claim 12.

Rejection of Claims 1, 10-11, 14, 21, 23-24, 27, and 36 Under § 102

Claims 1, 10-11, 14, 21, 23-24, 27 and 36 have been rejected under 35 U.S.C. § 102(b) based on U.S. Patent No. 4,914,650 ("Sriram"). Applicants respectfully traverse these rejections.

Applicants respectfully submit that Sriram fails to teach all of the limitations of independent claim 1, 14, or 27. As the Examiner has pointed out, Sriram addresses the queuing of voice, data, and signaling packets. However, Applicants respectfully submit that Sriram specifically teaches transmitting *all* of the signaling packets that appear in a signaling queue before any voice or data packets are transmitted: "This loop continues until the signaling packets are exhausted and the signaling queue SQ equals 'zero'" (col. 5, lines 60-62). Applicants' claim 1, as amended, on the other hand, recites a method that includes the step of "optimally selecting a maximum number of bypass packets to communicate between two non-bypass packets to maximize the downstream transmission rate without substantially interfering with the upstream transmission rate." Similarly, independent claim 14, as amended, recites a system that includes software that is "operable to communicate up to a specified maximum number of bypass packets between communication of two non-bypass packets and wherein the maximum number is optimally selected to maximize the downstream

ATTORNEY DOCKET NO.
020533.0238 (2002P00640US)

PATENT APPLICATION SERIAL NO
09/645,866

bandwidth.” And finally independent claim 27, as amended, recites a system that includes a communication manager that is “operable to communicate up to a specified maximum number of bypass packets between communication of two non-bypass packets.”

Sriram specifically discloses transmitting *all* of its signaling packets before other packets are transmitted. Sriram does not teach or suggest the above limitations of claims 1, 14, and 27. Based on at least this significant difference, Applicants respectfully submit that these claims are not anticipated by Sriram. Accordingly, Applicants respectfully request favorable reconsideration of the rejection of independent claims 1, 14, and 27 and claims 10-11, 21, 23-24, and 36, which depend therefrom.

Rejection of Claims 1-7, 9, 12-20, 22, 25-35, and 37-39 Under § 103

Claims 1-7, 9, 12-20, 22, 25-35, and 37-39 have been rejected under 35 U.S.C. § 103(a) in view of U.S. Patent No. 4,914,650 (“Sriram”), U.S. Patent No. 5,940,405 (“Sakuma”), U.S. Patent No. 6,764,645 (“Bernet”), U.S. Patent Pub. 2002/0087732 (“Boucher”), U.S. Patent No. 6,067,301 (“Aatresh”), U.S. Patent No. 6,570,849 (“Skemer”), U.S. Patent No. 5,557,608 (“Calvignac”), U.S. Patent Pub. 2001/0055303 (“Horton”), and U.S. Patent Pub. 2001/0021949 (“Blightman”). Applicants respectfully traverse the rejections.

Sriram teaches the queuing of signaling packets by transmitting *all* signaling packets before any other packets. Aatresh provides more intelligent queuing, but it deals only with voice, video, and data packets. Aatresh does not confront the problem addressed by Applicants’ invention:

“Because information packets 312 and acknowledgment messages 314 are interleaved in the upstream direction, the slow transfer rate of information packets 312 results in a correspondingly slow transfer rate of acknowledgment messages 314. Since the network element transmitting information packets 302 to host 16 in the downstream direction is waiting to receive acknowledgment messages 314, host 16 receives one information packet 302 followed by a waiting period 320.”

(Applicants’ Spec. pg. 20, lines 9-17).

Applicants respectfully submit that the Examiner has not identified a suggestion or motivation in either Aatresh or Sriram that would have lead one of skill in the art to combine these to references in the manner suggested by the Examiner. Since the Examiner has not identified a specific suggestion or motivation to combine, it appears that the Examiner is

ATTORNEY DOCKET NO.
020533.0238 (2002P00640US)

PATENT APPLICATION SERIAL NO
09/645,866

simply relying on the level of skill in the art as a suggestion or motivation to combine. To the extent that the Examiner has done so, Applicants respectfully submit that this rationale is improper: "The level of skill in the art cannot be relied upon to provide the suggestion to combine references." *Al-Site Corp. V. VSI Int'l Inc.*, 50 USPQ2d 1161 (Fed. Cir. 1999).

In the absence of a specific suggestion or motivation to combine Aatresh and Sriram, Applicants respectfully submit that the combination of Aatresh and Sriram suggested by the Examiner is hindsight reconstruction of Applicants' invention. In light of the above, Applicants respectfully submit that independent claims 1, 14, and 27 are patentable and non-obvious over Aatresh and Sriram. Accordingly, Applicants respectfully request favorable reconsideration of the rejection of independent claims 1, 14, and 27 and claims 2-7, 9, 12-13, 15-20, 22, 25-26, 28-35, and 37-39, which depend therefrom.

Allowable Subject Matter

Applicants thank the Examiner for the thorough examination and allowance of claim 8. The Examiner has indicated that claim 8 would be allowable if rewritten in independent form. Applicants have amended claim 8 accordingly.

CONCLUSION

In light of the above remarks, Applicants respectfully request favorable reconsideration and allowance of claims 1, 3-5, 7-18, 20-21, 23-31, 33-34, and 36-39. Should the Examiner have any questions concerning this paper or application, the Examiner is respectfully requested to contact Applicants' undersigned attorney to resolve such issue or question. The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: 2/18/05

By: MB

Terrence M. Brennan
Registration No. 42,360
(407) 736-4149

Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, New Jersey 08830

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ BLACK BORDERS
- ☐ IMAGE CUT OFF AT TOP, BOTTOM OR SIDES
- ☒ FADED TEXT OR DRAWING
- ☐ BLURRED OR ILLEGIBLE TEXT OR DRAWING
- ☐ SKEWED/SLANTED IMAGES
- ☐ COLOR OR BLACK AND WHITE PHOTOGRAPHS
- ☐ GRAY SCALE DOCUMENTS
- ☐ LINES OR MARKS ON ORIGINAL DOCUMENT
- ☐ REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY
- ☐ OTHER: _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.